

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

RONALD D. LEONARD,

Plaintiff,

v.

**Case No. 2:09-CV-961
JUDGE MARBLEY
MAGISTRATE JUDGE KING**

**OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION, *et al.*,**

Defendants.

OPINION AND ORDER

This matter is before the Court for consideration of Plaintiffs' *Objection* to the Magistrate Judge's June 22, 2010 *Order and Report and Recommendation*. The Court reviews the matter *de novo*, 28 U.S.C. § 636(b). For the reasons that follow, the decision of the Magistrate Judge is affirmed.

I.

Plaintiffs Ronald Leonard and Cole Worthington ["Plaintiffs"] are state inmates who claim that their exposure to asbestos and black mold at the Chillicothe Correctional Institution ["CCI"] amounts to a violation of the Eighth Amendment to the United States Constitution. Plaintiff Leonard sought a temporary restraining order, claiming that the exposure to mold and asbestos places him in "imminent danger." In his motion, Plaintiff requested that he be evacuated from CCI and that an investigation be ordered as to the presence of mold and asbestos at the prison.

The Magistrate Judge recommended that the motion for temporary injunctive relief be denied. In particular, the Magistrate Judge concluded that Plaintiff failed to demonstrate a substantial likelihood of success on the merits of the claim sufficient to warrant interim injunctive relief. *See Order and Report and Recommendation*, Doc. No. 25 at 7-8.

Plaintiff Leonard has filed an *Objection* to the Magistrate Judge's decision. Plaintiff argues that it is "abundantly clear that in Ohio prison officials are willing to deliberately expose inmates to toxic contaminants of friable asbestos and black mold of which the Defendants know to cause cancer and inevitable death." Doc. No. 28 at 4. Plaintiff argues that this demonstrates a substantial likelihood of success on the merits warranting injunctive relief.

The Court disagrees. As the Magistrate Judge observed, in order to establish an Eighth Amendment violation on account of alleged exposure to asbestos and mold, the Plaintiff must do more than offer conclusory assertions that Defendants acted with deliberate indifference to Plaintiff's health.

The test for determining deliberate indifference in contravention of the Eighth Amendment based on environmental conditions in a prison contains both an objective component and a subjective component. *Helling v. McKinney*, 509 U.S. 25, 35 (1993). In order to satisfy the objective component, an inmate must establish that his medical needs are "sufficiently serious." *Talal v. White*, 403 F.3d 423, 426 (6th Cir. 2005). In order to satisfy the subjective component, an inmate must establish that prison authorities knew of, and manifested deliberate indifference to, the inmate's serious medical needs. *Id.*

Order and Report and Recommendation, Doc. No. 25 at 6-7.

As the Magistrate Judge concluded, Plaintiff has not come forward with evidence to show that he is presently suffering a health condition due to exposure to mold and asbestos or that his future health is at risk. In addition, Plaintiff fails to show that Defendants have knowledge of a substantial risk of serious harm and that they have been deliberately indifferent

to the same. Thus, the Court concludes that temporary injunctive relief is not appropriate in this case.

II.

Plaintiff Leonard's *Objection*, **Doc. No. 28**, to the Magistrate Judge's decision is **DENIED**. The decision of the Magistrate Judge is **ADOPTED** and **AFFIRMED**. Plaintiff Leonard's *Motion for Temporary Restraining Order*, **Doc. No. 12**, is **DENIED**.

IT IS SO ORDERED.

July 30, 2010
DATE

s/Algenon L. Marbley
ALGENON L. MARBLEY
UNITED STATES DISTRICT JUDGE